

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 13TH AUGUST 2007 / 22ND SRAVANA 1929

WP(C).No. 22994 of 2007(K)

AGAINST THE ORDER IN EP.163/2006 IN
OS.426/2002 of PRINCIPAL SUB COURT, PALAKKAD
.....

PETITIONER: CLAIM PETITIONER/3RD PARTY

SATHYABHAMA, W/O. RAMAKRISHNAN,
PADARIMEDU, ERUTHEMPATHY, CHITTUR TALUK,
PALAKKAD.

BY ADV. SRI.VINOD KUMAR.C

RESPONDENTS: DECREE HOLDER/JUDGMENT DEBTOR

1. USHA @ GIRIJA, D/O. PRABHAKARAN,
PALACHIRA, ELAPPULLY, PALAKKAD.
2. KALADHARAN, S/O. VELAYUDHAN,
PALACHIRA, ELAPPULLY, PALAKKAD.
3. LEELAMANI, D/O. VELAYUDHAN (MENTALLY
INFIRM), REP. BY GUARDIAN KALADHARAN,
PALACHIRA, ELAPPULLY, PALAKKAD.

BY ADV. SRI.V.CHITAMBARESH
SRI.T.C.SURESH MENON
SRI.JIBU P THOMAS

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 13/08/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

W.P.(C)NO.22994/07

APPENDIX

PETITIONER'S EXHIBITS

- EXT.P1: TRUE COPY OF PLAINT IN O.S.426/02 DT. 17.12.02.
EXT.P2: TRUE COPY OF PLAINT IN O.S.236/07 DT. 27.6.07.
EXT.P3: TRUE COPY OF CLAIM PETITION DT. 06.07.07.
EXT.P4: TRUE COPY OF COUNTER STATEMENT DT. 09.07.07.

TRUE COPY

PA TO JUDGE.

M.N. KRISHNAN, J.

W.P.(C)NO. 22994 OF 2007

DATED THIS THE 13th DAY OF AUGUST, 2007

JUDGMENT

This writ petition is filed to direct the Court below to permit the petitioner to adduce evidence in E.A.No.400/07 in E.P.No.163/06 in O.S.No.426/02. The said suit is one for recovery of possession on the strength of title and plaintiff had been granted a decree in his favour and it is that decree, which is sought to be executed by him. The present claim petitioner is one of his sisters and she claims joint possession of the property and had already initiated a suit for partition to get her rights established as well as for partition of the property.

2. I am informed in the said suit an application for injunction was filed by the very same claim petitioner for an injunction to restrain execution of the decree, which is pending consideration and no orders have been passed.

3. The grievance of the writ petitioner is that the Court below has not permitted her to adduce evidence. Under Order XXI Rule 58 the Court need not entertain a claim application, if it finds that it is only with the object of delaying the proceedings. Whatever it may be it has further to be held that the petition under Order XXI Rule 58

considers a pre-requisite of an attachment of the property. Further any order passed under that Rule is either appealable or revisable. There are statutory rights given to the party aggrieved by the decision rendered by the Court below. Therefore, the proper remedy for the party is to challenge the said verdict if goes against him or her in appropriate proceedings. Further, the writ petitioner does not claim any independent possession of the property and wants to protect only her right in the property.

4. I am informed that in the suit for partition the present decree holder is also a party and it is with him on record the matter will be adjudicated. When the matter is so adjudicated and if ultimately it is found that the plaintiff is entitled to right over the property then the said decision will be binding on him irrespective of the present decree. Therefore, no harm will be caused to the claim petitioner by ordering delivery of the property by making it clear that everything will ultimately depend upon the final judgment passed in the suit for partition pending before the competent Court.

The writ petition is dismissed accordingly.

M.N. KRISHNAN, JUDGE

Acd

